

(2013) 01 BOM CK 0266

In the Bombay High Court

Case No : Criminal Writ Petition No. 538 of 2012

Smt. Alka Shivram Fating

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 04-01-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 452

Citation : (2013) ALLMR(Cri) 1355 : (2013) 3 BomCR(Cri) 465

Hon'ble Judges : M.L. Tahaliyani, J

Bench : Single Bench

Advocate : K.B. Zinjarde, for the Appellant; S.S. Doifode, Addl. P.P., for the Respondent

Final Decision : Allowed

Judgement

M.L. Tahaliyani, J.—Heard learned Counsel Mr. K.B. Zinjarde for the petitioner and learned Additional Public Prosecutor Mr. S.S. Doifode for respondent No. 1. Rule. Rule returnable forthwith. Heard finally by consent of learned Counsel for the parties.

2. The petitioner claims to be the owner of part of the property seized by police during the course of investigation of Crime No. 130/2012 of Hudkeshwar Police Station, Nagpur. The investigation of the case started from recording of First Information Report of Vipin Shivram Fating, aged 36 years. Vipin Fating was staying at Plot No. 13, Old Subhedar Extension, Behind Kamble Nursing Home, Nagpur-24 along with his family members. The alleged incident had occurred on 5th July, 2012 in the afternoon. The complainant Vipin Fating and his wife were out. His son had gone to School. His grandfather Mansaram Tulshiram Barjurkar, aged about 82 years, his maternal aunt Smt. Lata Rambhau Shaniware, aged about 50 years and daughter Adhira, aged about 9 months were at home. The incident had occurred during the course of the day. It is the case of prosecution that respondent No. 2 Lata, who is real sister of petitioner Smt. Alka Fating, was staying with the complainant at above said address. It may be stated here that

the petitioner is mother of complainant Vipin Fating. During course of the day, theft of valuable ornaments worth Rs. 3,70,000/- had taken place. First Information Report was recorded against unknown persons.

3. During course of investigation, it was revealed that respondent No. 2 had committed theft of the property. The property has been recovered by the police during the investigation. Part of the property recovered by the police is claimed by the petitioner and rest of the property is claimed by daughter-in-law of the petitioner, who is the petitioner in Criminal Writ Petition No. 539/2012. The charge-sheet has been filed and an application was made by the petitioner for grant of custody of seized ornaments during the pendency of trial. The petitioner claimed 4 Gold Bangles weighing 70 grams and 2 Bentex Bangles weighing 55 grams. It may be stated here that Bentex Bangles are not made of pure gold. The petitioner stated in her application that the value of property was about Rs. 2,00,000/-. The learned Magistrate after hearing the petitioner and Investigating Officer rejected the application on the ground that the description of the property seized by the police did not tally with the property claimed by the petitioner and that the petitioner had not been able to produce documents in support of her claim.

4. The petitioner filed the revision application before the Sessions Court. The learned Sessions Judge while disposing of Criminal Revision Application No. 325/2012 took the similar view and rejected the revision application.

5. The learned Counsel Mr. K.B. Zinjarde is heard on behalf of the petitioner. Learned Additional Public Prosecutor Mr. S.S. Doifode is heard on behalf of respondent No. 1. Respondent No. 2, who is accused in the charge-sheet before the trial Court, was later on added as respondent No. 2 and has been served. She has chosen to remain absent. It can, therefore, safely be said that she does not want to oppose the claim of the petitioner for custody of property during the pendency of trial.

6. As far as respondent No. 1 is concerned, it may be stated here that it is the case of respondent No. 1 itself that the seized property mentioned in the petition belongs to the petitioner. The whole case of prosecution is based on recovery of the property, which according to the prosecution, belongs to the petitioner.

7. In view thereof, it was not necessary for the learned Magistrate to ask for production of documents in respect of the ornaments claimed by the petitioner. The learned Magistrate should have taken note of the legal position that the custody, if any, would have been an interim custody subject to final order of the Court to be passed u/s 452 of the Code of Criminal Procedure at the conclusion of trial. For all these reasons, I pass the following order.

Criminal Writ Petition is allowed.

The orders passed by the Courts below are set aside.

The property mentioned in the petition i.e. 4 Gold Bangles weighing 70 grams

and 2 Bentex Bangles weighing 55 grams worth about Rs. 2,00,000/- shall be released to the petitioner by the trial Court on execution of her Personal Bond of Rs. 2,00,000/- with following conditions.

(i) She will not change the description of property.

(ii) She will not dispose of the property or part with the property in any manner without prior permission of the trial Court.

(iii) She shall produce the property as and when required by the trial Court during the course of trial.

Rule is made absolute in above terms.